THE HON'BLE SRI JUSTICE B.SESHASAYANA REDDY

WRIT PETITION No.12244 of 2005

Dated 19th December 2005

Between:

1. Smt. Karumuri Putlamma, wife of
Sri Anji Reddy, aged 45 years,
Occ: 10th Ward Member,
Pamarru Gram Panchayat,
Resident of Pamarru village,
Krishna District and another.

…..Petitioners

And

1. Commissioner of Panchayat Raj and
Rural Employment, Urdu Hall Lane,
Himayathnagar, Hyderabad and 2 others.

….Respondents.

* * *

ORDER:

This writ petition has been filed by the petitioners, who are ward members of Pamarru Gram Panchayat, with a prayer to issue a writ, order or direction, declaring

the proceedings Rc.No.2975/2002 Pan.5 dated 01.12.2004, issued by the District Collector, Krishna District-second respondent appointing Rekapalli Krishna Vasu-third respondent as temporary sarpanch under Section 26(3) of A.P. Gram Panchayat Act, (for short 'the Act'), as illegal and arbitrary.

2. Petitioners and third respondent are ward members of Pamarru Gram Panchayat. Sarpanch of Pamarru Gram Panchayat came to be removed on 30.11.2004 by the District Collector, Krishna District-second respondent. Third respondent, who is ward member of 12th ward came to be appointed as temporary sarpanch under proceedings Rc.No.2975/2002 PM.5 dated 01.12.2004. The said proceedings are under challenge in the writ petition.

3. Heard the learned counsel for the petitioners and the learned Government Pleader for Panchayat Raj appearing for respondents 1 and 2.

4. Learned counsel for the petitioners submits that under Section 26(3) of the A.P. Gram Panchayat Act, 1994 it is only commissioner empowered to appoint a ward member to discharge functions of sarpanch and since the impugned proceedings are issued by the District Collector, the same is liable to be set aside.

5. Learned Government Pleader for Panchayat Raj submits that the District Collector after issuing proceedings sought for ratification and the file is pending with the commissioner for passing appropriate orders. Nearly an year has been lapsed after passing of the order impugned in the writ petition. Under Section 26(3) of the Act it is the commissioner who has to issue the proceedings empowering ward member to discharge the functions of sarpanch. It is useful to refer Section 26(3) of the Act and it is thus:

> " When the Sarpanch is under suspension or when the office of Sarpanch is vacant or the Sarpanch has been continuously absent from jurisdiction for more than fifteen days or is restrained by an order

of a Court from exercising the powers and performing the functions of the Sarpanch or is incapacitated for more than fifteen days and the Upa-Sarpanch also is under suspension or there is either a vacancy in the office of Upa-Sarpanch or the Upa-Sarpanch has been continuously absent from jurisdiction for more than fifteen days or is restrained by an order of a Court from exercising the powers and performing the functions of the Upa-Sarpanch or is incapacitated for more than fifteen days, the powers and functions of the Sarpanch shall devolve on a member of gram panchayat appointed by the commissioner in this behalf.

The member so appointed shall be styled as the temporary Sarpanch and he shall exercise the powers and perform the functions of the Sarpanch until a new Sarpanch or Upa-Sarpanch is declared elected or either the Sarpanch or the Upa-Sarpanch ceases to be under suspension or returns to jurisdiction or ceases to be restrained by an order of a court or recovers from his incapacity, as the case may be."

6 . On a plain reading of the above said referred provision it indicates that the commissioner is the competent authority to empower ward member to discharge the functions of sarpanch. Since, admittedly the proceedings impugned in the writ petition are issued by the District Collector-second respondent, the same are not in accordance with the provisions of Section 26 of the Act and thus, are liable to be set aside.

7 . Accordingly, the writ petition is allowed setting aside the proceedings Rc.No.2975/2002 Pan.5, dated 01.12.2004 issued by the District Collector, Krishna District-second respondent. No costs.

_____

B.SESHASAYANA REDDY, J.

Date: 19th December 2005.

BSB